



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF O-A-A-

DATE: JULY 10, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a petroleum engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and contends that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we find he has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

In response to the Director's request for evidence (RFE), the Petitioner provided a "statement of intent" indicating that he is "currently working as a petroleum engineering data scientist in a premier independent oil and gas company." He stated that he is currently employed by [REDACTED] an oil and gas company with \$12 billion in annual revenue.⁴ In addition, the Petitioner submitted a May 2017 employment verification letter from [REDACTED] stating that he "works as an Evaluation and Planning [E&P] Professional in the E&P Analytics Department" and that his work for the company "involves helping our subsurface business unit integrate, model, predict, and analyze complex data, as well as other related activities."⁵ He also offered a recent paycheck receipt, a copy of his April 2017 job offer for his E&P "Professional 3" position, and general information about [REDACTED] along with documentation of his publication and citation history. Lastly, the RFE response included a May 2016 "Independent Consultant Agreement" indicating that the Petitioner will perform petroleum engineering consulting services for [REDACTED].⁶

The Petitioner has asserted that he intends "to use the mathematical, statistical, computing, and engineering skills" to "solve challenging data analytics" problems in the petroleum engineering

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The record reflects that the Petitioner earned a doctorate degree in petroleum engineering from [REDACTED] in 2012.

⁴ The Petitioner did not complete Part 6 of the Form I-140, entitled "Basic Information About the Proposed Employment."

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current and prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework.

⁶ This agreement reflects that the Petitioner will establish contact with clients, develop leads, develop and deliver proposals for company services, find solutions for clients' needs, and provide consulting services to clients.

industry, and that he also will “continue independent research in the field of carbon sequestration in deep saline aquifers.” He described carbon sequestration as one of the proposed methods for reducing anthropogenic carbon dioxide emissions to the atmosphere therefore mitigating global climate change. The record includes letters of support and published articles discussing the benefits of his proposed areas of research, as well as a 2015-2016 policy resolution from the [REDACTED] [REDACTED] noting the benefits of enhanced oil production using carbon dioxide. Accordingly, we find that the Petitioner’s proposed work has substantial merit.

With respect to the national importance of the Petitioner’s proposed endeavor, the Director’s RFE asked for evidence documenting the “potential prospective impact” of his work. In response, the Petitioner reiterated that he intends to continue his work in the field of petroleum engineering “with an emphasis on data science/data analytics.” He also expressed his desire to “continue conducting independent research in the field of carbon sequestration.”

First, we note that the Petitioner does not sufficiently clarify how his work performing petroleum engineering services as an E&P professional for [REDACTED] or as a consultant for [REDACTED] relates to his proposed research. He states that he will utilize “tools, techniques, and methodologies that use data as the starting point, building blocks, and foundation of analysis, workflows, modeling, and decision making.” In addition, the Petitioner asserts that his goal is “to develop data-driven technologies to better characterize complex reservoirs, build data-driven reservoir models, smart proxies of numerical models and data-driven reservoir management tools.” He does not explain the capacity in which he intends to develop these technologies, whether in the private or public sector, nor does he sufficiently describe what portion of his time he intends to devote to such activities.

The record does not show that the Petitioner’s proposed petroleum engineering and consulting work has implications beyond any individual company and its business partners or clients at a level sufficient to demonstrate the national importance of his endeavor. He has not demonstrated that the specific work he proposes to undertake for the aforementioned companies has broader implications in the field of petroleum engineering, or otherwise offers original innovations that contribute to petroleum data driven analytics in the broader oil and gas industry.⁷

Regardless, to the extent that the Petitioner proposes to conduct carbon sequestration research and development, we find the evidence sufficient to demonstrate that such research is of national importance. The Petitioner submits evidence that the [REDACTED] and [REDACTED] have both advocated for and proposed legislation to address carbon sequestration, particularly storage at deep saline formations and oil and gas reservoirs. Thus, the record shows that research in this area stands to have broader implications beyond any one company or organization, whether through the development of advances in carbon sequestration techniques or through research for dissemination to others in the field through professional journals and conferences. As the Petitioner has documented

⁷ In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

both the substantial merit and national importance of his proposed carbon sequestration research, he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

With respect to the second prong of the *Dhanasar* analysis, however, the Petitioner has not demonstrated a record of success or progress in his field, or a degree of interest in his work from relevant parties, rising to the level of rendering him well positioned to advance his proposed research. See *Dhanasar*, 26 I&N Dec. at 890. The record includes a copy of the Petitioner's résumé, educational credentials, evidence of his peer review activities, a [REDACTED] scholar citation history, and several letters of recommendation. In the appellate submission, the Petitioner states that his research has been cited by scholars from Australia, Canada, Ecuador, and the United States, including researchers at the [REDACTED] and he claims that the Director failed "to properly acknowledge the influence of [his] research."

The record contains several articles written by the Petitioner that discuss carbon storage and sequestration, with the most recent article published in the [REDACTED] in 2013.⁸ The record does not, however, include evidence that this work constitutes a record of success or otherwise renders him well positioned to advance his proposed research.

On appeal, the Petitioner has not presented sufficient documentation illustrating the significance of his research findings, nor has he addressed the Director's finding that he has not published much scholarly work in nearly five years. He avers that his citation record is evidence that he is well positioned to advance his proposed endeavor.⁹ The Petitioner does not, however, offer comparative statistics indicating how often other petroleum engineering researchers are cited, nor does the record otherwise demonstrate that his published and presented research constitutes a record of success or a level of interest in his work from relevant parties sufficient to meet this prong. Further, while the

⁸ On appeal, the Petitioner avers that we should also consider an article that he authored entitled [REDACTED] published in the [REDACTED] in 2016. The Director correctly noted that this article was published after the date of filing of this petition. The Petitioner avers on appeal that the article was accepted for publication prior to the filing and therefore should be considered as evidence of his continuing influence. While we agree with the Director that eligibility must be established at the time of filing, we have included the article in evaluating whether the Petitioner's publication record demonstrates his eligibility.

⁹ The Petitioner's appellate submission includes statements that he has a stronger citation record than Dr. Dhanasar, the petitioner in our precedent decision. While we listed Dr. Dhanasar's "publications and other published materials that cite his work" among the documents he presented, our determination that he was well positioned under the second prong was not based on his citation record. Rather, in that case we found "[t]he petitioner's education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as [REDACTED] and [REDACTED] position him well to continue to advance his proposed endeavor of hypersonic technology research." See *Dhanasar*, 26 I&N Dec. at 891, 893. We reiterate that we look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and citations are merely one factor among many that may contribute to such a finding.

Petitioner points to the fact that his work has been downloaded hundreds of times, he has not presented evidence illustrating the significance of this number, or establishing that the research has been implemented, utilized, or applauded by those viewing it.¹⁰ Moreover, the record does not indicate that his research findings have been employed by government or private sector entities, or that his work has affected specific oil and gas reservoir development projects.

The record also includes several letters of recommendation. While complementary of the Petitioner's work, they do not offer sufficient detail regarding his specific research accomplishments. For example, the record includes a letter from [REDACTED], a geophysicist for [REDACTED]. He states that the Petitioner has made "recognized contributions" to the field of carbon sequestration and that he has "benefited from [the Petitioner's] work by using some of the techniques in reservoir modeling." [REDACTED] does not explain which techniques he utilized, nor does he sufficiently explain the nature of the Petitioner's contribution or offer adequate detail explaining how the Petitioner's work renders him well positioned to advance the proposed research endeavor.

In addition, [REDACTED] a staff scientist in the [REDACTED] Division at [REDACTED] and a visiting professor at [REDACTED],¹¹ indicates that the Petitioner "developed a novel method of reducing aquifer pressurization while also increasing the storage efficiency of the injected CO₂." While [REDACTED] contends that he and other members of the research community found the Petitioner's work "to be of significant value," he does not offer specific examples of how the Petitioner's simulation method has generated positive interest among relevant parties, has been implemented in the oil and gas industry, or otherwise reflects a record of success in his area of research.

The record also includes a letter from [REDACTED] a reservoir engineering advisor for [REDACTED], an independent oil and gas company. [REDACTED] states that he became familiar with the Petitioner's technical abilities when he attended a software web demonstration given by the Petitioner. He also asserts that the Petitioner "is a talented researcher with unique and exceptional skills in reservoir characterization, pressure transient analysis and fluid flow modeling in porous media." [REDACTED] does not, however, offer any additional information or evidence to support his statements.

In sum, while the aforementioned colleagues and others attest that the Petitioner is respected by his peers, these references do not adequately explain how his work has been influential among petroleum engineering researchers, has served as an impetus for progress or generated positive discourse in the field, or otherwise represents a record of success or progress rendering him well positioned to advance his proposed research.¹² As such, the Petitioner has not demonstrated his eligibility under the second prong of the *Dhanasar* framework.

¹⁰ The downloads of the Petitioner's two articles in [REDACTED] corroborate that he has disseminated his findings, but they are not sufficient to demonstrate a record of success of, or interest in, his research.

¹¹ [REDACTED] notes that the Petitioner "was a student of mine during my time at [REDACTED]"

¹² We note that, on appeal, the Petitioner contends the Director erred in not considering his employment with [REDACTED]

C. Balancing Factors to Determine Waiver's Benefit to the United States

Finally, with regard to the third prong of the *Dhanasar* analysis, the Petitioner has not established that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. He has not, for instance, provided information or evidence outlining why a labor certification would be impractical in his case; whether the United States would benefit from his contributions even if other U.S. workers are also available; or whether urgency warrants foregoing the labor certification process. In addition, as the Petitioner has not established that he is well positioned to advance his proposed research as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of O-A-A-*, ID# 1285616 (AAO July 10, 2018)

as evidence that he is well positioned to advance his proposed endeavor. However, as noted by the Director, the Petitioner's experience as a petroleum engineering data scientist with began after he filed the instant petition and therefore does not show his eligibility under the second prong of the *Dhanasar* analysis at the time of filing. See 8 C.F.R. § 103.2(b)(1). Regardless, the record does not indicate the Petitioner will conduct his proposed research as part of his employment with nor does it otherwise show how this position renders him well positioned to advance his proposed endeavor.